



APPENDIX

Legislative History of Section 83 (j) of the
Bankruptcy Act, 11 U. S. C. § 403 (j)

After the decision in *In re City of West Palm Beach*, 96 F. (2d) 85, there was introduced into the House of Representatives, 75th Congress, 3d Session, a bill (H. R. 10753) to amend the Municipal Bankruptcy Act by adding the present subsection (j). The measure was reported favorably by the Committee on the Judiciary of the House of Representatives. The pertinent portion of the report (Report No. 2693, 75th Cong., 3d Sess.) reads as follows:

The bill would amend the Municipal Bankruptcy Act (ch. 10 of the act of 1898 as amended, Public Law 302, 75th Cong.), to permit compositions by cities, etc., in accordance with the purposes of the original act (ch. 10).

The necessity for the amendment arises by virtue of the decision of the Circuit Court of Appeals, Fifth Circuit, on April 14, 1938, in the *West Palm Beach, Florida, case*, where it was held that the act permits only plans of composition which are wholly executory, and that evidences of indebtedness already exchanged under the plan, prior to the filing of the petition, could not be included in computing the necessary percentage of securities held by consenting creditors to declare the plan operative.

H. R. 10753 would permit the court to include new refunding bonds already exchanged under the plan of composition when figuring the percentage of consenting creditors, regardless of whether such ex-

change was completed before or after the filing of the petition.

In the *West Palm Beach case* about 85 percent of new bonds had been exchanged prior to filing the petition. The plan cannot be enforced under the circuit court of appeals case unless $66\frac{2}{3}$ percent of the remaining 15 percent give their approval, thus effectively preventing the operation of the act of 1937.

This bill was never acted upon by either branch of the Congress.

When the Chandler Act to amend the general bankruptcy statute was being considered in the same session of the Congress, Senator Pepper of Florida introduced subsection (j) as an amendment (83 Cong. Rec., p. 8728).

Mr. PEPPER. Mr. President, I will state the purpose. Let us assume that under the existing municipal bankruptcy law a municipality which had engaged in no partial refunding of its obligations desired to make some adjustment of its total obligations outstanding. Under the existing municipal bankruptcy law, which was passed after its amendment occurred at the last session, that municipality could obtain the consent of 51 percent of its outstanding obligees, and present that to the court along with a plan of composition, and if two-thirds of all the obligees agreed to that plan of composition, then it would be possible for the court, by the approval of that plan, to put it into effect, and the plan would bind all the obligees. That is the provision of the existing municipal bankruptcy law.

Before that municipal bankruptcy law went into effect there were a number of municipalities which had engaged in a partial

refunding, or, rather, had inaugurated a refunding program, which had been partially completed, but, in the absence of any laws to aid them, they were completely at the mercy of a recalcitrant minority of their obligees as to whether or not that refunding plan could succeed.

A very few bondholders could prevent the accomplishment of the whole refunding program, no matter if 98 percent of the obligees might desire that it go into effect.

Thus we found, after the passage of the municipal bankruptcy act, that it only provided that municipalities might have access to that act for the adjustment of their total outstanding obligations. When a case arising in West Palm Beach, Fla., went up on appeal, the United States Circuit Court of Appeals for the Fifth Circuit held that the municipal bankruptcy law was not applicable to that kind of a situation. That the consent of even 98 percent of the bondholders could not get the case into court for a fair consideration by a Federal judge. So my amendment merely proposes that municipalities coming within that class shall have resort to the Federal court, through the means of the municipal bankruptcy law, for a fair adjustment of their obligations upon the same principles that are laid down by the original Municipal Bankruptcy Act.

Mr. AUSTIN. Mr. President, I recall this matter coming up at that time in the Committee on the Judiciary, and that we did not have time to give it a thorough study; and I must submit that I cannot see offhand whether this creates a special class of creditors—

Mr. O'MAHONEY. It does not do that.

Mr. AUSTIN. Or a special class of debtors.

Mr. O'MAHONEY. It does not.

Mr. AUSTIN. Or whether it sets up a discrimination against any other class.

Mr. O'MAHONEY. It does not.

Mr. AUSTIN. I shall have to depend on the Senator from Wyoming for advice on that point.

Mr. O'MAHONEY. As I understand, 85 percent of the bondholders in the particular case have agreed to the proposal, but the agreement was made at such a time that it does not satisfy the present law. A bill identical with that of the Senator from Florida was introduced in the House by Representative Wilcox. It went to the House Judiciary Committee, and it was recommended favorably by that committee, and is now, as I understand, upon the calendar. A special subcommittee of the Senate Committee on the Judiciary considered it, and at the meeting of the committee last Monday the Senator from Delaware [Mr. Hughes] presented the report of that subcommittee. It was about to be accepted, and the bill was to have been reported favorably, when I suggested that the matter be held over in order that I could have an opportunity of reading the record and having it offered as an amendment to the bill now before us. I assure the Senator that the amendment is quite satisfactory. It is only a technical matter.

I hope the amendment will be adopted.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Florida [Mr. Pepper].

The amendment was agreed to.

This amendment was adopted by the Senate (83 Cong. Rec. 8729) and later by the House of Representatives, which adopted the Senate amendments to the Chandler Act without debate (83 Cong. Rec. 9101-9110).

